IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 42 of 1996

Date of Decision: 30.10.2007

The Commissioner of Income-tax (Central), Ludhiana

....Applicant

Versus

M/s Nav Bharat Banaspati and Allied Industries Doraha

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Sanjiv Bansal, Advocate for the revenue.

Mr. S.K.Mukhi, Advocate with
Ms. Navender P.K.Suri, Advocate and
Mr. Rajive Sharma, Advocate for the assessee.

**AJAY KUMAR MITTAL, J.**

This reference under Section 256 (1) of the Income Tax Act, 1961 (for short "the Act") has been made to this Court at the instance of the revenue by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") arising out of its order dated 8.8.1995 in I.T.A. No. 106/Chandi/1988 relating to the assessment year 1983-84 referring the following question of law:-

"Whether, on the facts and in the circumstances, the

Income-Tax Appellate Tribunal was right in law in holding the computer as part of industrial undertaking and entitled to additional depreciation and investment allowance overlooking the proviso to section 32A?"

The facts as noticed in the statement of case are that the assessee claimed additional depreciation and investment allowance on computer costing Rs.3,36,812/- and the claim was disallowed on the ground that the computer had not been installed in the factory premises but in the office. The assessee took the plea that though the computer had been installed in an AC room yet had been used for factory purposes only and the factory premises were located only at a distance of 100 meters from the office. The Assessing Officer did not agree and allowed only normal depreciation. The assessee filed an appeal and the same was dismissed. The assessee took the matter before the Tribunal and the Tribunal while accepting the appeal held the assessee entitled to additional depreciation as well as investment allowance.

We have heard learned counsel for the parties.

Mr. Sanjeev Bansal, learned counsel for the revenue has referred to the provisions of Sections 32 and 32A of the Act and submitted that the assessee-respondent had installed the computer in the office premises which was used during the year for working/computing the wages and salaries payable to the various employees and also for the preparation of financial statements like balance sheets etc. and copies of accounts of various parties and as such was not entitled for additional depreciation and investment allowance under the aforesaid provisions. Learned counsel

emphasized that it is the installation of the computer which is of relevance and the same having been installed in the office premises, the benefit of additional depreciation and investment allowance under Sections 32 and 32A of the Act respectively was not available to the assessee. It was argued that the computer was being used for office purposes and not for production purposes and the Tribunal had wrongly allowed the additional depreciation and investment allowance to the assessee. Learned counsel placed reliance upon a decision of Calcutta High Court in **Commissioner of Income-Tax v. Technico Enterprise Pvt. Ltd., [1994] 206 ITR 36** in support of his contention.

Mr. Mukhi appearing for the assessee controverted the submissions of learned counsel for the revenue and submitted that the computer was part of the industrial undertaking of the assessee and was not installed in the office but was installed in the room next to the office and as such it could not be said that the computer was installed in the office to which the provisions under Sections 32 and 32A of the Act for additional depreciation and investment allowance were not available. Learned counsel placed reliance upon the decision of Bombay High Court in **Commissioner of Income-Tax v. IBM World Trade Corporation, [1986] 161 ITR 673** and Calcutta High Court in **Commissioner of Income-Tax v. Shaw Wallace and Co. Ltd., [1993] 201 ITR 17** in support of his submissions.

We have given our thoughtful consideration to the respective submissions of learned counsel for the parties and find merit in the submission of learned counsel for the revenue.

It would be of advantage to reproduce the provisions of

Sections 32 and 32A of the Act as it stood at the relevant time in order to appreciate the controversy between the parties. The aforesaid provisions read thus:-

> "32 (1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed-
>
> (i) XX XX XX
>
> (ii) XX XX XX
>
> (iia) in the case of any new machinery or plant (other than ships and aircraft) which has been installed after the 31st day of March, 1980, but before the Ist day of April, 1985, a further sum equal to one-half of the amount admissible under clause (ii) (exclusive of extra allowance for double or multiple shift working of the machinery or plant and the extra allowance in respect of machinery or plant installed in any premises used as a hotel) in respect of the previous year in which such machinery or plant is installed or, if the machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year:
>
> **Provided** that no deduction shall be allowed under this clause in respect of-
>
> (a) any machinery or plant installed in any office

premises or any residential accommodation;

(b) any office appliances or road transport vehicles; and

(c) any machinery or plaint, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year.

Explanation: For the purpose of this clause,-

(a) "new machinery or plant" shall have the meaning assigned to it in clause (2) of the Explanation below clause (vi) of this sub-section;

(b) "residential accommodation" includes accommodation in the nature of a guest house but does not include premises used as a hotel;

XX XX XX

XX XX XX

32A. (1) In respect of a ship or an aircraft or machinery or plant specified in sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was

acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, to a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee:

**Provided** that no deduction shall be allowed under this section in respect of-

(a) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest house;

(b) any office appliances or road transport vehicles;

(c) any ship, machinery or plant in respect of which the deduction by way of development rebate is allowable under section 33; and

(d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head “Profits and gains of business or profession” of any one previous year.

(2) The ship or aircraft or machinery or plant referred to in sub-section (1) shall be the following, namely:-

(a) a new ship or new aircraft acquired after the 31st day of March, 1976, by an assessee engaged in the business of operation of ships or aircraft;

(b) any new machinery or plant installed after the 31st day of March, 1976,-

(i) for the purposes of business of generation or distribution of electricity or any other form of power; or

(ii) in a small-scale industrial undertaking for the purpose of business of manufacture or production of any article or thing; or

(iii) in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule.

XX XX XX

XX XX XX"

The Finance (No.2) Act, 1980, inserted a new clause (iia) in Section 32(1), whereby the additional depreciation was granted in respect of new machinery or plant in certain cases. The new clause came into effect on and from April 1, 1981 i.e. for the assessment year 1981-82 and subsequent years. The additional depreciation was an amount equal to 50% of the normal depreciation (excluding extra shift depreciation and extra depreciation allowance for approved hotels) in respect of new machinery or plant installed after March 31, 1981 but

before April 1, 1985. The benefit of additional depreciation was available to an assessee in the year of installation or where the plant or machinery was first put to use in the immediately succeeding year then in that succeeding year.

Under the proviso, additional depreciation, however, was not available in respect of machinery or plant installed in any office premises or in any residential accommodation.

Likewise, the investment allowance was granted under Section 32A of the Act which was inserted by the Finance Act, 1976 w.e.f. 1.4.1976 for and from assessment year 1976-77. Sub-section (1) requires that the machinery or plaint (a) should be owned by the assessee, (b) should be wholly used for the purposes of the business carried on by him, and (c) should be the machinery or plant specified in sub-section (2), i.e., it should be new machinery or plant installed in an industrial undertaking for the purposes of the business of manufacture or production of articles or things.

However, under the proviso, no deduction by way of investment allowance is allowable in respect of-

i) any machinery or plant installed in any office premises or any residential accommodation, including a guest house;

ii) any office appliances;

iii) any road transport vehicles;

iv) any ship, machinery or plant in respect of which development rebate was or is allowable; and

v) any machinery or plant, the whole of the actual

cost whereof is allowed as a deduction (by way of depreciation, etc.), in computing assessee's taxable income of any one assessment year.

A plain reading of Sections 32 and 32A of the Act together with proviso shows that the benefit of additional depreciation and investment allowance is admissible to an assessee on fulfilment of conditions enumerated therein. However, under the proviso to the said Sections, an assessee is not entitled for the benefits of aforesaid allowance on the plant or machinery in case the same is installed in the office premises or residential accommodation.

The Division Bench of Calcutta High Court in Technico Enterprise Pvt. Ltd's case (supra) while considering the entitlement of an assessee for additional depreciation and investment allowance on an expenditure for installation of computer, held that an assessee was not entitled to aforesaid allowances unless it was established that the computer was used for the purposes of the business of manufacture or production of any article or thing. Accordingly, it was concluded that the assessee was not entitled to the said allowance on the computer installed by it at its office premises during the relevant period for accounting purpose and maintenance of records.

Adverting to the facts of the present case, the assessee had claimed before the Assessing Officer that the computer had been installed in a separate room adjacent to the office which was being used during the year for calculating the wages and salaries payable to the workers and also for the preparation of accounts. Further, the factory premises were found to be situated at about 100 meters away from

office premises. On the aforesaid facts, it cannot be said that the computer had been used for the purposes of assessee's business of manufacture or production in the factory and the observation of the Tribunal to the contrary is not borne out from the record. The Tribunal was, thus, not correct in allowing additional depreciation and investment allowance on the computer to the assessee.

We now make reference to the judgments relied upon by the assessee. In IBM World Trade Corporation's case (supra), the Bombay High Court was dealing with a case of an assessee involved in data processing and the question that arose for consideration therein was whether EA machines which were called data processing machines were office appliances or plant. It was on the basis of facts noted therein held that data processing machines were not office appliances but were plant which were eligible for development rebate. The said pronouncement does not advance the case of the assessee.

The Calcutta High Court in Shaw Wallace and Co. Ltd.'s case (supra) was dealing with a case of an assessee who had installed new plant and machinery in the computer division which was a profit earning centre rendering services to outside customers and was also registered as a factory under the relevant law. The assessee was held entitled to investment allowance on the same holding the computer division to be an industrial undertaking. The assessee cannot derive any benefit from the said decision on the facts as noted in the present case.

In view of the above, the question referred to this Court for opinion is answered in favour of the revenue and against the assessee.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**October 30, 2007** **( M.M. KUMAR )**
gbs **JUDGE**